

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK ANTHONY CLEARMAN,

Petitioner,

v.

B.M. TRATE,

Respondent.

Case No. 1:22-cv-00444-HBK (HC)

ORDER DENYING CERTIFICATE OF
APPEALABILITY ¹

This matter comes before the Court upon sua sponte review of the file. Petitioner Mark Anthony Clearman is a federal prisoner who initiated this action by filing a pro se petition for writ of habeas corpus under 28 U.S.C. § 2241. (Doc. No. 1, “Petition”). On May 22, 2023, the undersigned granted Respondent’s motion to dismiss the Petition, the Petition was dismissed for lack of jurisdiction, and judgment was entered the same day. (Doc. No. 17-18). On June 12, 2023, Petitioner filed a Notice of Appeal. (Doc. No. 19). However, the Clerk of Court did not process the Notice of Appeal because the Court’s order dismissing the case did not address whether a certificate of appealability should be issued. (*See* docket).

Having already determined that petitioner is not entitled to habeas relief, the Court now turns to whether a certificate of appealability should issue. *See Harrison v. Ollison*, 519 F.3d

¹ Both parties have consented to the jurisdiction of a magistrate judge, in accordance with 28 U.S.C. § 636(c)(1). (Doc. No. 14).

1 952, 958 (9th Cir. 2008) (“Where a petition purportedly brought under § 2241 is merely a
2 ‘disguised’ § 2255 motion, the petition cannot appeal from the denial of that petition without a
3 [certificate of appealability].”). A prisoner seeking a writ of habeas corpus has no absolute
4 entitlement to appeal, rather an appeal is only allowed in certain circumstances. *Miller-El v.*
5 *Cockrell*, 537 U.S. 322, 335–36 (2003); *see also* 28 U.S.C. § 2253(c)(1)(A) (permitting habeas
6 appeals from state prisoners only with a certificate of appealability). A judge shall grant a
7 certificate of appealability “only if the applicant has made a substantial showing of the denial of a
8 constitutional right,” 28 U.S.C. § 2253(c)(2), and the certificate must indicate which issues satisfy
9 this standard, 28 U.S.C. § 2253(c)(3). In the present case, the Court finds that reasonable jurists
10 would not find the determination that the Petition should be dismissed to be debatable or conclude
11 that the Petition should proceed further.

12 Accordingly, it is **ORDERED**:

13 The Court declines to issue a certificate of appealability.

14
15 Dated: February 29, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE